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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/267,362	03/15/1999	JUN NITTA	35.G2360	6956
5514	7590	01/30/2004	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO			RODRIGUEZ, ARMANDO	
30 ROCKEFELLER PLAZA			ART UNIT	
NEW YORK, NY 10112			PAPER NUMBER	

2828

DATE MAILED: 01/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/267,362

Applicant(s)

NITTA, JUN

Examiner

Armando Rodriguez

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.


- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.


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Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Response to Arguments

Applicant's arguments filed November 5, 2003 have been fully considered but they are not persuasive.

Applicant's arguments on page 9 of amendment filed on November 5, 2003, pertains to the coupling coefficient limitation, however it is known that these coefficients are established based on the particular structural features of the waveguides or regions and applicant has not recited any particular structural features within the claim language to imply that the recited coupling coefficient of the invention is patentable distinct from the Hiroki reference, since the cited reference teaches a similar device with similar regions performing the same function.

Applicant's arguments on the particular order the phase controlling region, second region and the first region are coupled, where the phase control region provides switching between the polarization modes. The cited reference, Hiroki discloses a different order for coupling the first region, phase control region and the second region, where the phase control region provides switching between the polarization modes. Therefore, having a similar device with similar regions providing the same function of switching between polarization modes would have been an obvious design choice, to rearrange the order of the regions, for any person having ordinary skill in the art because the device regardless of the order of the regions will provide switching of the polarization modes. Furthermore, applicant has failed to demonstrate the criticality of the specific claimed order of the regions, if unexpected superior results of the claimed

order of the regions are known then applicant's attention is directed to MPEP 716.01 and requested to submit an affidavit or declaration according to 37 CFR 1.132, as evidence for the unexpected superior results.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

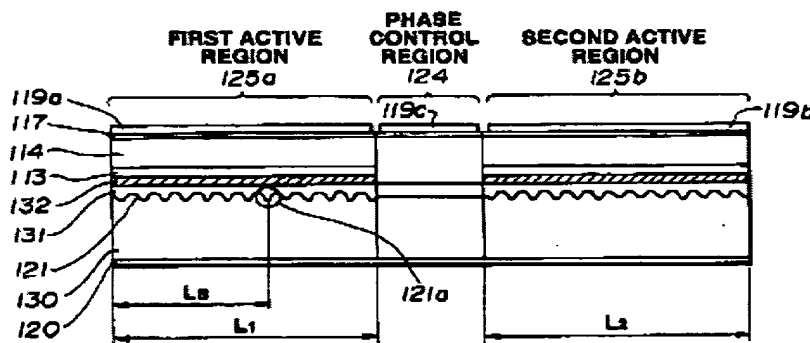
The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 10-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Hiroki (PN 5,757,840).

Hiroki discloses a semiconductor laser which may be used in an optical communication system for transmitting a signal from a transmitter to a receiver through an optical transmission line, wherein the polarization mode of output light from the above semiconductor laser is modulating between transverse electric (TE) and transverse magnetic (TM) polarization modes by controlling a current injected into the semiconductor laser, only the output light in either the TE mode or the TM mode is

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selected by selecting means to create an amplitude-modulated signal, and the amplitude-modulated signal is transmitted through an optical transmission line, see column 2. Figure 8 illustrates a similar arrangement, as applicant's claimed laser, having three regions a first region (125a) with a diffraction grating, a second region (125b) with a diffraction grating and a phase control region (124) where all three regions are serially coupled. The TE mode and TM mode can be separated from each other by their threshold current when current is injected into the phase control region see column 5. The coupling coefficients for the polarization modes will deviate from normal values by the injection of current into the phase control region, see column 6.

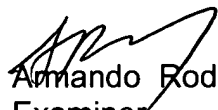
FIG.8**Conclusion**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Armando Rodriguez whose telephone number is 571-272-1952. The examiner can normally be reached on 10-hour day / M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Ip can be reached on 571-272-1941. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-4881.


Armando Rodriguez
Examiner
Art Unit 2828


Paul Ip
Supervisor
Art Unit 2828

AR/PI